IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 631 OF 2007

Bayama Construction ..Petitioner

Vs.

M/s. Krystal Stone Exports Ltd.
and anr. ..Respondents

Mr. P.S. Dani for petitioner.
Mr. S.A. Tawale for respondent nos.1 and 2.
Mr. D.R. More, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : August 10, 2007.

P.C.:

1. Heard Mr. Dani the learned counsel for the petitioner. Mr. Tawale the learned counsel appears for respondent nos.1 and 2. The learned APP appears for the State.

2. Criminal Appeal No. 32 of 2001 was allowed and the impugned order was set aside as per the Judgment and Order dated 14/3/2006 and consequently the trial of Summary Criminal Case No. 789 of 1998 started de novo. On remand the case was registered as

Summary Criminal Case No. 128 of 2006 and the complainant filed an application seeking leave to bring on record the depositions of the accused as well as the statement recorded under Section 313 of Cr.P.C. in Summary Criminal Case No. 798 of 1998 and this application came to be rejected by the impugned order dated 20/2/2007.

3. Mr. Dani has referred to the decision of this court in the case of Shivaji Sampat Jagtap vs. Rajan Hiralal Arora and anr. [2006 ALL MR (Cri) 2612] and submitted that there was no bar on allowing such documents to be brought on record in the de novo trial. As per the learned Judge of the trial court the depositions recorded in the earlier round cannot be read in evidence.

4. The learned counsel for the respondents submitted that if the petitioner’s application is allowed, the accused also should be at liberty to bring on record the depositions of the complainant recorded in the earlier round for whatever work they are. The accused cannot be prevented from doing this.

5. Hence, it is held that both the parties are at liberty to bring on record the certified copies of the earlier depositions and whether the same should be read in evidence will have to be decided by the trial court as per law.

6. The petition is disposed off in terms of the above directions.

(B.H. Marlapalle,J.)